**SITI JULIANA SUEN ABDULLAH & ORS**

**v.**

**SUNGEI WANG PROPERTIES SDN BHD & ORS**

COURT OF APPEAL, PUTRAJAYA
MOKHTAR SIDIN JCA
RICHARD MALANJUM JCA
NIK HASHIM JCA
[CIVIL APPEAL NO: Q-02-115-2004]
15 JUNE 2005

***CIVIL PROCEDURE:*** *Jurisdiction - Forum non conveniens - Contract came into existence in West Malaysia - Payments made in West Malaysia - All defendants reside/registered in West Malaysia - Cause of action arose in KL - Whether High Court in Malaya or High Court in Sabah and Sarawak would be the proper forum to hear dispute - Real substantial connection with the case in terms of subject matter, facts, witnesses and documents - Liberty to file afresh - Courts of Judicature Act 1964, s. 23(1)*

The 1st and 2nd plaintiffs are the co-administrators of the estate of the deceased whilst the 3rd plaintiff is a private limited company registered in Sarawak and the 4th plaintiff a merchant registered in Kuala Lumpur. The 1st and 2nd defendants are private limited companies registered in Kuala Lumpur whilst the 3rd defendant is the CEO of the said defendant companies. The parties had earlier entered into an agreement by which the plaintiffs were to sell all their shares in the 2nd defendant to the 1st defendant. Subsequently, however, the plaintiffs brought an action against the defendants for breach of contract, claiming RM6,730,700 for moneys due and payable, specific performance and damages. Thereafter, the plaintiffs entered judgment in default of appearance against the defendants. Subsequently, the defendants, having sought and obtained leave for conditional appearance, filed their memorandum of conditional appearance and a summons-in-chambers to set aside the plaintiffs' writ of summons and default judgment. The learned judge allowed the defendants' application and struck out the plaintiffs' writ and statement of claim on the ground of *forum non conveniens* and want of jurisdiction. It was held that the High Court in Malaya, and not the High Court in Sabah and Sarawak, had the jurisdiction to adjudicate the case on its merits. The plaintiffs appealed.

**Held (allowing the appeal in part)**
**Per Nik Hashim JCA delivering the judgment of the court:**

**[1]** The learned judge was correct in holding that the High Court in Malaya had the jurisdiction to hear the case on its merits. The sale and purchase agreement – which formed the subject matter of the dispute – took form in Kuala Lumpur. All the payments made by the defendants to the plaintiffs were done in West Malaysia and none were made or carried out in Sarawak. Furthermore, all the defendants also reside or have their registered addresses in West Malaysia. By virtue of s. 23(1)(a), (b) and (c) of the Courts of Judicature Act 1964, the High Court in Malaya would have the jurisdiction to hear the matter as the cause of action arose in Kuala Lumpur. The defendants also have their place of business in Kuala Lumpur, which is within the local jurisdiction of the High Court in Malaya. The High Court in Malaya at Kuala Lumpur would appear to be the proper or convenient forum to determine the dispute between the parties. It had the more real and substantial connection with the case in terms of the subject matter, the facts of the case, the witnesses and the documents. (p 874 a-f)

**[2]** Nevertheless, the orders of the learned judge – without liberty to file afresh – was unjust in all the circumstances of the case as the plaintiffs would obviously be deprived from pursuing their claims against the defendants. (p 874 g)

*[Orders of High Court upheld; plaintiffs at liberty to file afresh.]*

*[**Bahasa Malaysia** Translation Of Headnotes*

Plaintif pertama dan kedua adalah pentadbir bersama pusaka si mati, plaintif ketiga adalah sebuah syarikat sendirian berhad yang didaftar di Sarawak, sementara plaintif keempat adalah sebuah perniagaan yang didaftar di Kuala Lumpur. Defendan pertama dan kedua adalah syarikat-syarikat sendirian berhad yang didaftar di Kuala Lumpur, manakala defendan ketiga adalah Ketua Pegawai Eksekutif syarikat-syarikat tersebut. Pihak-pihak telah memasuki suatu perjanjian di mana plaintif-plaintif bersetuju untuk menjual semua saham-saham mereka dalam defendan kedua kepada defendan pertama. Bagaimanapun, berikutnya, plaintif-plaintif memulakan tindakan terhadap defendan-defendan kerana melanggar kontrak sambil menuntut pelaksanaan spesifik, gantirugi dan RM6,730,700 sebagai jumlah yang terhutang dan harus dibayar kepada mereka. Plaintif-plaintif kemudian mendapat penghakiman ingkar kehadiran terhadap defendan-defendan. Sementara itu, defendan-defendan, setelah memperoleh kebenaran untuk kehadiran bersyarat, memfailkan memorandum kehadiran bersyarat mereka serta saman-dalam-kamar bagi menyingkir writ saman plaintif-

plaintif serta penghakiman ingkar. Yang arif hakim membenarkan permohonan defendan-defendan dan membatalkan writ dan penyata tuntutan plaintif-plaintif atas alasan forum non conveniens dan ketiadaan bidang kuasa. Diputuskan bahawa, yang mempunyai bidang kuasa untuk mengadili kes di atas merit. Mahkamah Tinggi Malaya dan bukannya Mahkamah Tinggi Sabah dan Sarawak. Plaintif-plaintif merayu.

**Diputuskan (membenarkan rayuan sebahagiannya)**
**Oleh Nik Hashim HMR menyampaikan penghakiman mahkamah:**

**[1]** Yang arif hakim betul dalam memutuskan bahawa Mahkamah Tinggi Malaya mempunyai bidang kuasa untuk mendengar kes di atas merit. Perjanjian jual beli – yang menjadi asas pertikaian – dimeterai di Kuala Lumpur. Kesemua bayaran yang dibuat oleh defendan-defendan kepada plaintif-plaintif di buat di Malaysia Barat dan tiada satupun dibuat di Sarawak. Selain itu, semua defendan-defendan bermastautin atau mempunyai alamat berdaftar di Malaysia Barat. Mengambilkira s. 23(1)(a), (b) dan (c) Akta Mahkamah Kehakiman 1964, Mahkamah Tinggi Malaya harus mempunyai bidang kuasa untuk mendengar halperkara oleh kerana kausa tindakan zahir di Kuala Lumpur. Tempat berniaga defendan-defendan juga adalah di Kuala Lumpur, yang termasuk dalam bidang kuasa tempatan Mahkamah Tinggi Malaya. Mahkamah Tinggi Malaya di Kuala Lumpur adalah merupakan forum yang wajar atau sesuai untuk memutuskan pertikaian di antara pihak-pihak. Ia mempunyai hubungan yang lebih rapat dan kukuh dengan kes berdasarkan halperkara, fakta kes, saksi-saksi serta dokumen-dokumen yang wujud.

**[2]** Walaupun begitu, perintah-perintah yang arif hakim – tanpa kebebasan untuk memfail semula – adalah tidak adil dalam keseluruhan halkeadaan kes kerana plaintif-plaintif jelas akan terhalang dari meneruskan tuntutan mereka terhadap defendan-defendan.

*Perintah-perintah Mahkamah Tinggi disahkan; plaintif-plaintif bebas memfail semula.]*

**Case(s) referred to:**
*RHB Bank Bhd v. Kawood Sdn Bhd & Ors (Aand Another Suit) [2002] 2 CLJ 387 HC* ***(refd)***

**Legislation referred to:**
Courts of Judicature Act 1964, s. 23(1)(a), (b), (c)
Rules of the High Court 1980, O. 13 r. 1(1)

*For the appellants - Tai Choi Yu; M/s Tai Choi Yu & Co*
*For the respondents - George Lim (Wee Wui Kiat with him); M/s Battenberg & Talma*

*[Appeal from High Court, Sibu; Suit No: 22-48-2002]*

*Reported by Gan Peng Chiang*

## JUDGMENT

**Nik Hashim JCA:**

Briefly the facts of the case are that the 1st and 2nd appellants are the co-administratrix and co-administrators of the estate of the late Mohd Nor bin Md Diah, deceased. The 3rd appellant is a private limited company having its registered address in Sibu, Sarawak whilst the 4th appellant is a merchant having an address in Kuala Lumpur. The 1st and 2nd respondents are private limited companies with registered and business addresses in Kuala Lumpur. The 3rd respondent is the Chief Executive Officer of the 1st and 2nd respondents. In the court below, the appellants were the plaintiffs whereas the respondents were the defendants.

The parties entered into a sale and purchase agreement dated 1 July 1996 wherein the appellants agreed to sell all the appellants' issued and allotted shares in the 2nd respondent to the 1st respondent. The appellants commenced an action against all the respondents for breach of the contract and claimed RM6,730,700 for monies due and payable under the agreement and specific performance of the agreement and damages.

The appellants had entered a judgment in default of appearance against the respondents pursuant to O. 13 r. 1(1) of the Rules of High Court 1980 on 4 December 2002.

On 29 March 2003, the respondents filed an *ex parte* application for leave for conditional appearance which was granted on 31 March 2003. The respondents then filed their memorandum of conditional appearance and the summons in chambers (encl. 19) to set aside the writ of summons and the judgment in default on 1 April 2003 and 2 April 2003 respectively.

The learned judge allowed the respondents' application in encl. 19 for setting aside the appellants' writ of summons and the judgment in default of appearance with costs and that the appellants' writ of summons and the statement of claim be struck out for want of jurisdiction being forum non conveniens. The learned judge ruled that "it is the High Court in Malaya and not the High Court in Sabah and Sarawak which has the jurisdiction to adjudicate the instant case on its merit". Hence, this appeal.

On 23 November 2004, we allowed the appeal in part ie, that the order given by the High Court on the striking out is upheld but the appellants are given the liberty to file afresh in the High Court of Malaya. We also made an order that the respondents be granted half of costs in this appeal and the appellants' deposit of RM500 be in account of the said costs.

In our judgment, the learned judge was correct in holding that the High Court in Malaya and not the High Court in Sabah and Sarawak which has the jurisdiction to adjudicate or to hear the present case on its merit. It was not seriously in dispute that the sale and purchase agreement which forms the subject matter of this action occurred or arose in Kuala Lumpur. And all the payments by the respondents to the appellants were made in West Malaysia and none was made or carried out in Sibu, Sarawak. Further, all the respondents reside or have their registered addresses in West Malaysia. Thus, by virtue of s. 23(1)(a),(b) and (c) of the Courts of Judicature Act 1964, the High Court in Malaya has the jurisdiction to hear the instant suit as the cause of action arose in Kuala Lumpur and that all the respondents have their places of businesses in Kuala Lumpur, which is within the local jurisdiction of the High Court in Malaya.

As regards forum conveniens, we agree with the learned judge that the High Court in Malaya at Kuala Lumpur would appear to be the proper or convenient forum to determine the dispute between the two parties. The forum which has the more real and substantial connection with the present case in terms of subject matter, the facts giving rise to this action which occurred in West Malaysia, and the relevant witnesses and/or documents pertaining to this action reside or situate in West Malaysia, would be the High Court at Kuala Lumpur rather than the High Court at Sibu (see *RHB Bank Berhad v. Kawood Sdn Bhd & 2 Ors (and Another Suit)* [2002] 2 CLJ 387).

However, on the facts of this case, we are of the view that the striking out order by the learned judge given without the liberty to file afresh in the appropriate court based on the ground of forum non conveniens, would be unjust in the circumstances as by the said order, the appellants would obviously be deprived from pursuing their claims against the respondents. Hence, we made the orders accordingly.